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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/030,989	02/26/1998	RICHARD A. NAZARIAN	28724/34520	8085

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EXAMINER

ZIMMERMAN, BRIAN A

ART UNIT

PAPER NUMBER

2635

33

DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/030,989	NAZARIAN ET AL.
Examiner	Art Unit	
Brian A Zimmerman	2635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 29 January 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 16-38 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

6) Other: \_\_\_\_\_

## **EXAMINER'S RESPONSE**

### **Status of Application**

The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. It is the examiner's position that claims 16-38 are unpatentable for the reasons set forth in this office action:

This Office Action is in response to the petition under 37 CFR 1.144 which was treated as a request for reconsideration of the restriction requirement, the requirement being withdrawn in view of the request.

The applicant filed an Appeal Brief 2/5/03. The consideration of claims 23-38 is presented for the first time in this Office Action. The Appeal Brief does not address the rejections of these claims, and is therefore incomplete. If the applicant intends to continue with an Appeal to the Board of Appeals, they must submit a new Appeal Brief addressing all pending rejections as now set forth below.

### **Claim Rejections - 35 USC § 103**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 16-22,23-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dais (5524213), Omori (5820414), together or alternatively in combination with Schenk (5444626) and Sites (5730720).

*A* Dais shows a system that can be used as a medical communication system that includes a bus and interface units connected to the bus and also to peripheral units. See col. 1 line 11+. The interface units generate messages in the form of digital data packets. Dais does not expressly show the interface unit to be within a housing and have different shaped coupling means for coupling to the bus, and the peripheral.

Although Dais does not expressly show the communication system used in a medical perfusion system, it is the examiner's position that medical perfusion systems commonly used communications systems. As an example, Sites shows a medical perfusion system that requires a communication system. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above modified communication system to provide communication for a medical perfusion system, as Sites shows a communication system for a medical perfusion system and leaves it up to the artisan to choose an appropriate communication system.

*A* In an analogous art, Omori shows an interface adapter that connects a circuit board 1 to a bus 19a. The interface adapter includes processing elements 16 and 17 and includes connector means which have different shaped couplers as claimed, to provide connection and improvement of the IC card. Omori shows a controller, which provides power to the slave device through the adapter. See col. 7 lines 38+.

The examiner takes note that a profusion device is a well-known medical instrument that would have fallen under the medical application taught by Dais.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized an interface unit in the shape of Omori in the Dais system in order to provide connection and improvement to the peripheral unit of Dais.

With regard to the "adapted to" limitation, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. If such a limitation were given weight, it is submitted that Dais shows the modules 2-5 which communicate to the control unit 1 in addition to other modules. Additionally Schenk (5444626) also shows a communication adapter (pod), which communicates information to other modules in addition to a control unit.

Although Dais does not expressly show the communication system used in a medical perfusion system, it is the examiner's position that medical perfusion systems commonly used communications systems. Furthermore, Sites shows a medical perfusion system that requires a communication system. Sites shows that the controlled medical perfusion system includes some communication between a central station and a plurality of blood pumps. Sites specifically shows the use of control signals to control the speed of the blood pumps, which is considered a mode control signal (col. 11 lines 62+). Sites shows the pumps to be or the roller type. As evidenced by the applicant's discussion of centrifugal pumps on page 6 line 10+, the use of centrifugal vs. roller pumps is considered a design choice and would have been obvious

to one of ordinary skill in the art. Sites shows the communication of alarm data on col. 7 lines 36+ and the communication of the specific parameters claimed, see table 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above modified communication system to provide communication for a medical perfusion system, as Sites shows a communication system for a medical perfusion system and leaves it up to the artisan to choose an appropriate communication system.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

It is noted that the examiner is aware of 35 USC 121 regarding the use of related (divisional) applications as basis for rejections, however in this instance the pending claims in question were not subject to the restriction requirement made in the parent.

2. Claims 23 and 30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 5813972. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons. Appellants, in the course of expanding their first application to disclose enough more by way of details, alternatives, and additional uses to support the broad, dominating, "generic" claims here, have disclosed no additional invention or discovery other than what has already been claimed in patent as explained below. To allow such claims would improperly provide timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982). An example side-by-side comparison of the claims is shown below.

Claim 23	US Patent 5813972
An adaptor pod for use in a medical perfusion system, wherein the medical perfusion system has a plurality of perfusion devices, including at least one blood pump, and a communication network that links each of the plurality of perfusion devices,	Claim 1 includes at least two blood pumps in a medical profusion system. Claim 1 also includes at least one adapter pod. Claim 1 further includes limitations of a communication network that interconnects each of perfusion devices.
the adaptor pod comprising: a first connector for use in coupling the adaptor pod, through a data bus, to any one of a number of available connection points within the communication network;	Claim 1 describes the first adapter pod as including a network connector device, and claim 8 discusses that a bus (signals lines) are included in the adapter pod.
a second connector for use in coupling the adaptor pod to the blood pump via a data line;	Claim 8 additionally describes a second connector including a "second number of signal lines."
and means for controlling the transmission	Claim 6 includes a network controller for

of a blood pump control signal from the adaptor pod to the blood pump over the data line.	controlling transmission of messages over the network of perfusion devices (blood pumps) of claim 1.
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Claims 23-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,6-8 of U.S. Patent No. 5813972 in view of Sites (5730720). The claims in the patent do not expressly show or address the specific perfusion system limitations of claims 24-29 and 31-38 however as discussed above Sites does show the claimed elements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above claimed medical perfusion system of patent number 5813972 to provide communication for specific medical perfusion elements, as Sites shows what type of perfusion data is beneficial in communication system for a medical perfusion system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 703-305-4796. The examiner can normally be reached on Off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 703-305-4704. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

Brian A Zimmerman  
Primary Examiner  
Art Unit 2635

BZ  
April 15, 2003



MICHAEL HORABIK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

